HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

W.A. Nos.533 and 565 OF 2007

W.A.No.533 of 2007

Between:

Smt. K.Radhika and others

. . .Appellants

AND

P.Madhusudhana Rao and others

. . .Respondents

W.A.No.565 of 2007

Between:

M/s.Adsusumalli Constructions

. . .Appellant

AND

P.Madhusudhana Rao and others

. . .Respondents

:: COMMON JUDGMENT ::

Counsel for the appellants in W.A.No.533 of 2007 : Shri K.G.Kannabhiran Senior Advocate assisted by Shri A.Gopalakrishnamacharyulu

Counsel for the appellant in W.A.No.565 of 2007 : Shri Ravishankar Jandhyala

Counsel for respondents1to3 : Shri C.Raghu

Counsel for respondent No.4 : Shri S.Nageswara Reddy
Counsel for respondent No.5 : Smt. K.Aruna

17th July, 2007

PER G.S.SINGHVI, CJ

These appeals are directed against interlocutory order dated 19.06.2007 passed by the learned Single Judge in WPMP No.3624 of 2007 in Writ Petition No.2826 of 2007 filed by respondent Nos.1 to 3.

A perusal of the record shows that after obtaining building permission from the competent authority of Tenali Municipality (for short, 'the Municipality'), M/s. Adusumalli Constructions (hereinafter described as 'the builder') constructed residential apartments. Respondent Nos.1 to 3 complained against the alleged illegal and unauthorised construction, but the concerned authorities of the Municipality did not take any action. Therefore, they filed Writ Petition No.2826 of 2007 for issue of a mandamus to the Municipality and Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority (hereinafter described as 'the Development Authority') to take action against the builder and ensure that the construction is made in accordance with the sanctioned plan. They also filed WPMP.No.3624 of 2007 for restraining the builder from violating the sanctioned plan pending disposal of the writ petition.

After hearing learned counsel for the petitioners, learned counsel representing the Municipality and the builder, the learned Single Judge felt prima facie convinced that the construction made by the builder is in blatant violation of the sanctioned plan and the functionaries of the Municipality and the Development Authority have failed to take action in accordance with law. This is evinced from the

following extracts of the order under challenge:

> "Prima facie, the construction by the third respondent is a potential towering inferno. The only apparent reason for such grossly deviant constructions is the apathy of respondents 1 and 2. This Court is not aware of any legal principle or authority by which respondents 1 and 2 are empowered to licence the annihilation of innocent citizens by such constructions by private developers. The constructions executed by the third respondent are a gross defiance of the law and a blatant obstruction and impediment to the Rule of law. The respondents 1 and 2 either by volition or abdication have facilitated this defiance of law by the third respondent.
>
> The third respondent has filed a counter affidavit, wherein the third respondent admits to have indulged in "minor deviations". Nowhere in the counter affidavit, does the third respondent expressly or by implication state that the constructions are in accordance with the approved building permit. The third respondent alleges that the first petitioner is inemically disposed towards him and the other petitioners who belong to the same caste as the first petitioner have by transferred malice developed inemical disposition towards the third respondent.
>
> There is an equivocal admission by the third respondent and unequivocal assertion by the respondents 1 and 2 as to the illegal and grossly deviant constructions by the third respondent which is dangerous to the public interest and to the interests of the neighbours including the petitioners of the right to air and ventilation and more importantly hazardous to the unsuspecting occupants of the building, who in case of a fire hazard will have no escape from an incendiary death. The unsuspected purchasers are not alleged by the third respondent to be inemically disposed towards the third respondent."

The learned Single Judge then proceeded to pass the order, which is subject matter of challenge in these appeals. For the sake of convenient reference, the directions given by the learned Single Judge are extracted below:

> "The respondents 1 and 2 are directed to forthwith, at any rate within two days from today to seal the property in the premises bearing D.Nos.2-39-1, 2-39-2 & 2-38-37, Block-7, Ward No.10, Shakamurivari Street, Gandhinagar, Tenali, Guntur District and prevent its user in any manner. The respondents 1 and 2 shall also employ watch and ward in requisite strength to effectuate the

sealing of the aforesaid premises and to ensure that no further constructions or accretions to the property by way of civil or electrical works take place in the property.

The first respondent shall also within two days from today depute an Officer, not below the rank of a Town Planning Officer, who shall make a survey of the constructions in the above premises and shall take photographs to record the status of the constructions as on the date of the inspection. The deputed Officer will send up a signed report to the first respondent who shall file a further affidavit into this Court enclosing the report of the Town Planning Officer.

In case, there are any occupants in the premises, the respondents 1 and 2 are also at liberty to take appropriate steps in accordance with the powers available under Municipalities Act to evict the persons in occupation before sealing the property. The respondents 1 and 2 are also at liberty to issue a public notice notifying the public as to the hazardous nature of the constructions in the premises.

It is orally represented by Sri Ravi Shankar Jandhyala, the learned counsel for third respondent, that the Court of I Additional Junior Civil Judge, Tenali has granted an interim injunction in O.S.No.102 of 2007 preferred by the third respondent restraining the respondents 1 and 2 from interfering with the constructions in the premises. Even so, notwithstanding any order in O.S.No.102 of 2007 by the Court of I Additional Junior Civil Judge, Tenali, the respondents 1 and 2 shall execute the order herein contained.

As overlapping questions in respect of identical property are in issue in this writ petition as well as in O.S.No.102 of 2007 on the file of the I Additional Junior Civil Judge, Tenali, the suit in O.S.No.102 of 2007 shall be transferred to this Court to be heard along with this writ petition. The learned I Additional Junior Civil Judge, Tenali shall transfer entire records in O.S.No.102 of 2007 shall be listed along with this writ petition."

Smt.K. Radhika and three others (the appellants in Writ Appeal No.533 of 2007) have prayed for setting aside the order of the learned Single Judge by asserting that even though they purchased different portions of the building, which is the subject matter of the main writ

petition, the writ petitioners did not implead them as parties and the learned Single Judge passed order for sealing of the premises without giving them any opportunity of hearing. In Writ Appeal No.565 of 2007, the builder has pleaded discrimination in the matter of removal of illegal and unauthorised constructions by asserting that it has been singled out for demolition, but no action has been taken against 17 other builders, who have made constructions in violation of the sanctioned plan.

Shri K.G.Kannabhiran, learned counsel appearing for the appellants in Writ Appeal No.533 of 2007 made strenuous efforts to convince us that the direction given by the learned Single Judge to seal the premises is not in public interest and that any order to the Municipality and the Development Authority to demolish the illegal construction would result in waste of money and material. Shri Ravishankar Jandhyala reiterated the complaint that the municipal authorities have discriminated his client in the matter of removal of the illegal and unauthorised constructions.

Shri S.Nageshwara Reddy, learned counsel for the Municipality submitted that the Commissioner of the Municipality had issued final notice dated 19.02.2007 under Section 228 (1) of the Andhra Pradesh Municipalities Act, 1965, but further action was not taken because notice of the suit filed by the builder had been received by the municipal authorities and it was thought appropriate to await disposal of the injunction application.

We have considered the submissions of the learned counsel. In our opinion, the interim directions given by the learned Single Judge are not only just and proper but a step in furtherance of the action which is required to be taken in accordance with law for demolition of every illegal/unauthorised construction.

Since the writ petition is yet to be adjudicated, we do not want to

express any opinion on the merits of the violations made by the builder, but for the purpose of adjudication of the appeals, we do not have any slightest hesitation to observe that the construction, which is subject matter of challenge in the writ petition is contrary to the sanctioned plan. This is clearly borne out from the reply affidavit filed on behalf of the Municipality, which has not been controverted by the builder. Therefore, we do not see any reason to interfere with the interim arrangement made by the learned Single Judge.

The plea of discrimination raised by the builder, if accepted, would amount to judicial recognition of the doctrine of negative equality, which is not enshrined in Article 14 of the Constitution. The Courts have consistently ruled that Article 14 envisages equality before law and equal protection of laws and the same cannot be used for compelling a public authority to act illegally or pass illegal orders.

It is true that the purchasers, who are appellants in Writ Appeal No.533 of 2007, were not impleaded as parties to the writ petition and, on that account, they did not get opportunity of hearing, but having considered all the submissions of Shri Kannabhiran, we are convinced that the only direction which deserves to be given in their appeal is that they be impleaded as parties.

In the result, Writ Appeal No.533 of 2007 is partly allowed and the writ petitioners are directed to implead the appellants as parties to the writ petition. The remaining prayer of the appellants namely, vacating the interim order is rejected. Writ Appeal No.565 of 2007 is dismissed.

As a sequel to disposal of the writ appeals, WAMP No.1101 of 2007 in W.A.No.533 of 2007 and WAMP No.1102 of 2007 in W.A.No.565 of 2007 filed by the appellants for interim relief are disposed of as infructuous.

G.S.SINGHVI, CJ

17th July, 2007

C.V.NAGARJUNA REDDY, J

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